



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

June 20, 1988

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 88- 83

Erick E. Nordling
Hugoton City Attorney
P.O. Box 250
Hugoton, Kansas 67951

Re: Cities of the Second Class--Miscellaneous
Provisions--Natural Gas Production and Sale;
Acquisition of Drilling Sites; Contracts

Cities and Municipalities--Public Utilities--
Acquisition and Operation of City Plants

Constitution of the State of Kansas--
Corporations--Cities' Powers of Home Rule

Synopsis: A city of the second class may, pursuant to K.S.A. 14-1041 et seq., contract with an individual for the drilling of natural gas wells whereby the wells become the property of the city and the individual is fully reimbursed from any proceeds therefrom. While K.S.A. 14-1042 prescribes that the drilling of the well, in the first instance, shall be without cost to the city, that statute is part of an enactment which is not uniformly applicable to all cities. Accordingly, where a city of the second class seeks to secure additional natural gas sources to provide fuel for its power and light plant, it may adopt a charter ordinance exempting itself from the restriction upon bearing the cost of drilling and equipping a well.

Pursuant to the provisions of K.S.A. 12-842, a city of the second or third class may purchase natural gas at the wellhead from wells located outside the

city limits, and construct, operate, and maintain a pipeline necessary to transport the gas either directly to the city power plant, or to a pipeline system which would transport the natural gas for the city.

Under home rule powers granted by Article 12, Section 5 of the Kansas Constitution, a city which acquires an interest in a producing gas well outside the city limits may take production from the well "in kind" rather than receiving a cash royalty. Additionally, a city may purchase spot market gas for its power plant several months in advance of its use. Cited herein: K.S.A. 12-842, 14-1041, 14-1042; Kan. Const., Art. 12, §5.

*

*

*

Dear Mr. Nordling:

You request our opinion concerning several questions relating to the acquisition of new natural gas sources for the municipal power and light plant of city of Hugoton. Our responses to the questions you have posed are set forth below.

You indicate that the city of Hugoton is interested in drilling a "deep" natural gas well pursuant to the provisions of K.S.A. 14-1041 et seq., and request our interpretation of K.S.A. 14-1042. Specifically, you ask whether the deep well could be converted into a infill well in the Chase formation (which includes the Hugoton field) if the deep well were not successful. In this regard, you indicate that the city already has a well (Fee No. 1) which is in the Hugoton field pay zone, and that the city is able to produce 100 percent of the allowable for said well. Accordingly, if there were an infill well, you indicate that the unit allowable (the original and the infill well) would be prorated between the two wells; thus, during the period in which the driller is recouping his costs and expenses from the production from the infill well, the city would, in effect, be paying for a portion of the new well because of the reduced amount of natural gas that could be taken from the Fee No. 1 well. In this context, you ask whether the restriction upon the city bearing the cost of drilling, as set forth in K.S.A. 14-1042, would be violated.

K.S.A. 14-1042 provides as follows:

"The drilling of a well as authorized in this act shall be upon the further conditions that some person shall be willing to enter into an agreement with the city whereby such person will drill and equip the well at his or her own expense, in the first instance, and without cost to the city, and with the understanding that such person shall be repaid from the natural gas produced from said well or the proceeds thereof, and that after being fully reimbursed the city shall then become the sole and exclusive owner of the well.

"The governing body of the city shall credit to the funds of the city, the proceeds and income accruing to the city by reason of the city's ownership of the gas well, and in order to secure to the common owners of the land situated within the corporate limits of the city a proportionate acquisition of, and benefit from, the natural gas underlying said land, all such proceeds shall be subject to governmental uses and purposes of the city as the governing body shall order from time to time and to reduce and eliminate, insofar as possible, all property taxes of the city. Any well drilled under authority of this act shall be drilled within the corporate limits of the city, except as hereinafter provided." (Emphasis added.)

As the underscored portion of the above quoted statute indicates, the drilling of the well, in the first instance, is to be without cost to the city. In our judgment, if an unsuccessful deep well was converted into an infill well, under the circumstances set forth above, the reduced amount of natural gas that could be taken from the Fee No. 1 well would constitute a "cost to the city," thereby violating the restriction set forth in the above quoted statute. However, that statute is part of an enactment which is applicable only to cities of the second class, and is therefore not uniformly applicable to all cities. Accordingly, where the city of Hugoton seeks to secure additional natural gas sources to primarily provide fuel for its power and light plant, it could

adopt a charter ordinance, pursuant to the provisions of Article 12, Section 5 of the Kansas Constitution, exempting itself from the restriction upon bearing the cost of drilling and equipping a deep well. Thus, through such a charter ordinance the city could allow the person who drilled the well to recoup his costs and expenses from the production from the infill well.

The second question is whether the city may purchase natural gas at the wellhead from wells located outside the city limits, and whether it has authority to construct, operate, and maintain a pipeline necessary to transport the gas either directly to the city power plant, or to a pipeline system which would transport the natural gas for the city.

K.S.A. 12-842 authorizes any city of the second or third class to construct and operate a variety of public utility facilities and provides as follows:

"Any city of the second or third class of the state of Kansas is hereby granted full power and authority, on behalf of such city, to purchase, procure, provide and contract for the construction of, and to construct and operate, gas plants, electric-light plants, electric power or heating plants, waterworks, natural-gas wells, and petroleum-oil wells, and to secure by lease, contract or purchase natural-gas lands, petroleum-oil lands, and other real estate, and to contract for and purchase natural gas, petroleum oil, electric current, and water to be delivered where purchased or elsewhere, and to construct, maintain and operate pipe lines, wires and other equipment for the transportation of the same from the place where such natural gas, petroleum, electric current or water may be delivered, to such points within or without the city as may be deemed advisable, for the purpose of supplying said city, its citizens and others, with water, light, gas, power, fuel or heat for domestic use or other purposes, and said cities are hereby authorized to place said pipe lines, wires and other equipment for said transportation upon and across any of

the public roads, highways and streets of this state in such manner as not to incommode the public in the use of such roads, highways and streets." (Emphasis added.)

Pursuant to the under-scored provisions of the above-quoted statute, the city of Hugoton may purchase natural gas at the well head from wells located outside the city limits, and construct, operate, and maintain a pipeline necessary to transport the gas either directly to the city power plant, or to a pipeline system which would transport the natural gas for the city.

Your next question is whether the city could take production from a producing gas well "in kind" rather than receiving a cash royalty, if it acquires an interest in such a well located outside the city limits. In our judgment, the terms under which a city acquires natural gas for its power plant is clearly a "local affair" which the city could address by ordinary ordinance under home rule powers granted by Article 12, Section 5 of the Kansas Constitution. Accordingly, in our judgment, a city which acquires an interest in a producing gas well outside the city limits may take production from the well "in kind," rather than receive a cash royalty.

Your final question is whether the city may, in order to secure a lower cost, purchase spot market gas for its power plant several months in advance of its use. In our judgment, such a purchase is for a public purpose, i.e., supplying the municipal power plant, and does not constitute a "speculative oil and gas venture." See City of Geneseo v. Gas Company, 55 Kan. 358, 361 (1895); Attorney General Opinion No. 83-90. Accordingly, it is our opinion that the city of Hugoton may, pursuant to K.S.A. 12-842 and home rule powers, purchase spot market gas for its power plant several months in advance of its use.

In summary, a city of second class may, pursuant to K.S.A. 14-1041 et seq., contract with an individual for the drilling of natural gas wells whereby the wells become the property of the city and the individual is fully reimbursed from any proceeds therefrom. While K.S.A. 14-1042 prescribes that the drilling of the well, in the first instance, shall be without cost to the city, that statute is part of an enactment which is not uniformly applicable to all cities. Accordingly, where a city of the second class seeks to secure additional natural gas sources to primarily provide fuel for its power

and light plant, it may adopt a charter ordinance exempting itself from the restriction upon bearing the cost of drilling and equipping a well.

Pursuant to the provisions of K.S.A. 12-842, a city of the second or third class may purchase natural gas at the well head from wells located outside the city limits, and construct, operate, and maintain a pipeline necessary to transport the gas either directly to the city power plant, or to a pipeline system which would transport the natural gas for the city.

Under home rule powers granted by Article 12, Section 5 of the Kansas Constitution, a city which acquires an interest in a producing gas well outside the city limits may take production from the well "in kind" rather than receiving a cash royalty. Additionally, a city may purchase spot market gas for its power plants several months in advance of its use.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:JLM:TRH:jm